

Federal Defenders
OF NEW YORK, INC.

52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director
and Attorney-in-Chief

Docket + File

Appeals Bureau
Barry D. Leiwant
Attorney-in-Charge

March 4, 2013

Via E-mail

The Honorable Paul G. Gardephe
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Valle, No. 12-cr-00847-PGG

Dear Judge Gardephe:

We write to provide the Court and the government with a prompt update on the proposed order of witnesses, which the defense has finalized now that the government has rested its case.

Mr. Valle intends to exercise his Fifth Amendment right not to testify. As a result, the defense would like to withdraw the Rule 12.2 notice of a mental condition defense, and will call Dr. Dietz only to provide general educational testimony about sexually sadistic fantasy and behavior. Dr. Dietz will not express any opinions about Mr. Valle, will not describe his examination, and will not discuss his "risk factors" methodology. The purpose of the testimony will merely be to give the jury background about sexually sadistic fantasies, and their prevalence in our society, so that the jury will have appropriate context to understand the evidence introduced in this case. This testimony will be a subset of what was previously described in the applicable Rule 16 notice; the defense is only contracting, not expanding, the scope of the testimony. The defense previously alerted the government that it was considering limitations on the scope of Dr. Dietz's testimony.

Based on these limitations of Dr. Dietz's direct examination, we will ask the Court to preclude cross-examination of Dr. Dietz regarding his examination of Mr. Valle, any facts he learned from that examination, and Dr. Dietz's "risk factors" methodology. *See* Fed. R. Crim. P. 12.2(c)(4)(A); Fed. R. Evid. 611(b). We wanted to alert the Court to this issue before tomorrow so that the Court and the parties can confer briefly at the beginning of the day to ensure that there are no particular questions or issues that might be considered objectionable. Based on the Court's instructions regarding any potentially objectionable areas of inquiry, the

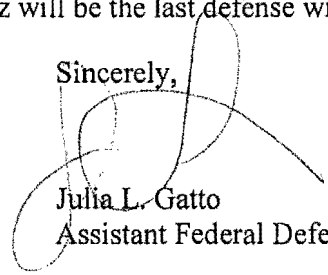
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attorney conducting the examination of Dr. Dietz will limit the PowerPoint presentation so that an appropriately circumscribed direct examination of Dr. Dietz can begin promptly tomorrow afternoon.

We hope that a brief discussion at the outset will reduce or eliminate the need for sidebars during Dr. Dietz's testimony, so that the defense case can proceed expeditiously. Without waiving any rights, we anticipate that Dr. Dietz will be the last defense witness.

Sincerely,



Julia L. Gatto
Assistant Federal Defender

cc: Hadassa Waxman
Randall W. Jackson
Assistant U.S. Attorneys
(Via E-mail)